

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

SHANE SMITH ENTERPRISES, INC.

PLAINTIFF

v.

No. 4:06CV00376 JLH

BANK OF AMERICA, N.A.

DEFENDANT

**ORDER**

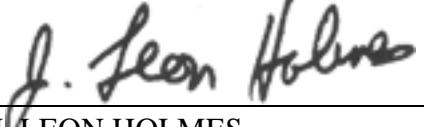
Shane Smith Enterprises, Inc., has filed a motion to reconsider this Court's June 29, 2007, Opinion and Order denying Shane Smith Enterprises' motion for partial summary judgment and granting in part and denying in part Bank of America's motion for summary judgment. Shane Smith Enterprises asks this Court to reconsider its holding that the account name "Melvin Lewis Walker DBA S. Smith Enterprises" is not substantially similar to "Shane Smith Enterprises" or "Shane Smith Enterpri." That issue was fully explored in the Court's June 29 Opinion and Order and will not be revisited here. Shane Smith Enterprises also contends that the Court erred in finding that Shane Smith Enterprises' claim for common-law conversion was governed by § 4-3-405(b) of the Arkansas Code. Shane Smith Enterprises' argument cannot be squared with the plain text of § 4-3-405(b):

*For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person.*

ARK. CODE ANN. § 4-3-405(b) (emphasis added). "To establish liability for the tort of conversion, a plaintiff must prove that the defendant wrongfully committed a distinct act of dominion over the property of another, which is a denial of or is inconsistent with the owner's rights." *Hatchell v.*

*Wren*, 363 Ark. 107, 116-117, 211 S.W.3d 516, 521 (2005). Where § 4-3-405(b) applies, there is no possession that is “a denial of” or “inconsistent with” the payee owner’s rights because “the indorsement is effective as the indorsement of the person to whom the instrument is payable.” ARK. CODE ANN. § 4-3-405(b). Shane Smith Enterprises’ motion to reconsider is DENIED. Document #74.

IT IS SO ORDERED this 10th day of July, 2007.

  
J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE